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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/538,698	06/10/2005	Matt O'Malley	T005-P05183US	6772
Matt O'Malley 17326 Gilmore Street Lake Balboa, CA 91406				
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SHAAWAT, MUSSA A				
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/538,698

Applicant(s)

O'MALLEY ET AL.

Examiner

MUSSA SHAAWAT

Art Unit

3627

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 April 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-41 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-41 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SF/ICE)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

1. This action is in response to amendment filed on 04/08/2009. Claims 1-44 have been amended. Claims 1-41 are pending examination.
2. The 101 and 112 rejections have been withdrawn as a result of the amendments to the claims.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claims 1-24 and 26-41 are rejected under 35 U.S.C. 102(e) as being anticipated by Treyz et al., US Patent No. (06,587,835) referred to hereinafter as Treyz.

As per claim 1, Treyz teaches a system for providing information to a user comprising: a first database; means for generating a first predetermined content for storage in said first database (see at least col.21 lines 20-40); a second database; means for generating a second predetermined content for storage in said second database (see at least col.22 line 65-col.23 line 6); server means; means for interconnecting said first and second databases to said server means (see at least col.22 line 65-col.23 line 6); a plurality of transceivers; means providing access by each of said transceivers to said server means; and selector means on each said

transceiver for selectively accessing said first and second content (see at least abstract, col.9 -col.10, fig.1 and 5).

As per claim 2, Treyz teaches a system as defined in claim 1 wherein said second predetermined content is determined by a local environment (see at least fig. 37).

As per claim 3, Treyz teaches a system as defined in claim 1 wherein said means for interconnecting said first database to said server means includes the World Wide Web (see at least col. 10 lines 55-65).

As per claim 4, Treyz teaches a system as defined in claim 1 wherein said transceivers are hand held devices (see at least fig.1 and fig.5).

As per claim 5, Treyz teaches a system as defined in claim 1 wherein said first and second content includes both audio information and textual information (see at least col.23 lines 1-5).

As per claim 6, Treyz teaches a system as defined in claim 1 wherein said means for providing access by each of said transceivers includes a wireless link (see at least col.3 lines 40-45).

As per claim 7, Treyz teaches a system as defined in claim 1 wherein said server means and said second database are disposed in a local commercial environment (see at least fig.1).

As per claim 8, Treyz teaches a system as defined in claim 7 wherein each of said transceivers further includes means for determining the location thereof in said local commercial environment (see at least fig. 73).

As per claim 9, Treyz teaches a system as defined in claim 8 wherein said second database includes information specific to said local commercial environment (see at least col.37 lines 54-60).

As per claim 10, Treyz teaches a system as defined in claim 9 wherein said transceivers are hand held devices and said selector means are activation devices carried by said hand held devices (see at least Abstract, col.9-col.10, fig.1, 5).

As per claim 11, Treyz teaches a system as defined in claim 2 which further includes means for providing access to said second database by a local content provider to input second content information (see at least col. 21 lines 35-60).

As per claim 12, Treyz teaches a system as defined in claim 11 wherein said transceivers are handheld devices (see at least Abstract).

As per claim 13, Treyz teaches a system as defined in claim 12 wherein each of said transceivers further includes means for tracking said transceiver within said local environment (see at least fig. 72).

As per claim 14, Treyz teaches a system as defined in claim 13 wherein said tracking information is provided to said local content provider (see at least fig. 72).

As per claim 15, Treyz teaches a system as defined in claim 12 wherein said handheld devices each include means for scrolling through selected content (see at least fig. 5 clock 124).

As per claim 16, Treyz teaches a system as defined in claim 15 wherein said content includes both audio information and textual information (see at least c.23 l. 1-5).

As per claim 17, Treyz teaches a system as defined in claim 1 wherein said server means includes a first server coupled to said first database and a second server coupled to said second database (see at least c22 l65-c23 l6, c21 l20-40).

As per claim 18, Treyz teaches a system as defined in claim 17 wherein said first server is coupled to said second server (see at least fig. 15).

As per claim 19, Treyz teaches a system as defined in claim 18 which further includes a third party database coupled to said first and second servers(see at least c.43 l.60-65, c.57 l.40-46).

As per claim 20, Treyz teaches a system as defined in claim 1 wherein said means for generating said first predetermined content includes central office production and processing means (see at least col.17 lines 15-20).

As per claim 21, Treyz teaches a system as defined in claim 20 wherein said means for generating a first predetermined content includes pre-recorded materials or live materials (see at least Col.17 lines 15-20).

As per claim 22, Treyz teaches a system as defined in claim 2 wherein said selector means further includes means for enabling said user to access information relevant to the users location within said local environment (see at least fig. 72).

As per claim 23, Treyz teaches a system as defined in claim 22 wherein said relevant information is regional information within a network grid (see at least fig. 72).

As per claim 24, Treyz teaches a system as defined in claim 23 wherein said network grid is determined by a plurality of coordinates within said local environment (see at least col. 2 lines 20-35).

As per claim 31, Treyz teaches a system as defined in claim 1 wherein said first predetermined content is determined by a remote environment (see at least col.5 lines 5-10, col.12 lines 25-35).

As per claim 32, Treyz teaches a system as defined in claim 31 which further includes a control office production and processing means for creating, collecting, aggregating, and distributing said first predetermined content (see at least col.8 lines 1-5, fig. 105, col.10 lines 25-35).

As per claim 33, Treyz teaches a system as defined in claim 32 which further includes means for providing access to said second database by a local content provider to input second content information (see at least col. 21 lines 35-60).

As per claim 34, Treyz teaches a system as defined in claim 33 wherein said transceivers are handheld devices (see at least Abstract).

As per claim 35, Treyz teaches a system as defined in claim 34 wherein each of said transceivers further includes means for tracking said transceiver within said local environment (see at least fig. 72).

As per claim 36, Treyz teaches a system as defined in claim 35 wherein said tracking information is provided to said local content provider (see at least fig. 72).

As per claim 37, Treyz teaches a system as defined in claim 34 wherein said handheld devices each include means for scrolling through selected content (see at least fig. 5 clock 124).

As per claim 38, Treyz teaches a system as defined in claim 37 wherein said content includes both audio information and textual information (see at least c.23 l. 1-5).

As per claim 39, Treyz teaches a system as defined in claim 34 wherein said server means includes a first server coupled to said first database and a second server coupled to said second database (see at least c22 l65-c23 l6, c21 l20-40).

As per claim 40, Treyz teaches a system as defined in claim 39 wherein said first server is coupled to said second server (see at least fig. 15).

As per claim 41, Treyz teaches a system as defined in claim 40 which further includes a third party database coupled to said first and second servers (see at least c.43 l.60-65, c.57 l.40-46).

As per claim 26, Treyz teaches a system as defined in claim 22 which further includes means for said user to request assistance from a local environment provider relevant to a specific issue (see at least col. 3 lines 50-65).

As per claim 27, Treyz teaches a system as defined in claim 26 which further includes means for said local environment provider to assign one or more helpers to assist said user and to assess the performance of said one or more helpers (see at least col. 3 lines 50-65).

As per claim 28, Treyz teaches a system as defined in claim 27 wherein said means to request assistance further includes means for said user to specify the expertise required to provide the desired assistance (see at least col. 3 lines 50-65).

As per claim 29, Treyz teaches a system as defined in claim 28 which further includes means for said local environment provider to acknowledge said request for assistance and to inform said user when a helper will be available (see at least col.3 lines 50-65).

As per claim 30, Treyz teaches means for providing to said user the identification of the helper or helpers that will provide the assistance (see at least col.3 lines 50-65).

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claim 25 is rejected under 35 U.S.C. 103(a) as being unpatentable over Treyz.

As per claim 25, Treyz does not expressly teach providing information to send user based on said user's past history within said local environment. However, the examiner takes Official Notice that recommending information to the user based on prior history or shopping history is old and well known in the art at the time the invention was made. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Treyz to include the teaching of Official Notice, in order to assist the consumer when shopping by recommending items that might be of interest to the consumer based on prior purchases, for example.

Response to Arguments

5. Applicant's arguments have been considered but are moot in view of the new ground(s) of rejection.

Re: Official Notice taken in the previous action. The examiner notes that Applicant's traversal is inadequate. MPEP 2144.03(c) requires that the applicant subsequent action adequately traverse the statement that certain subject matter is old

and well known art. It further notes that an adequate traversal must state why it is believed that the subject matter is not old and well known.

MPEP 2144.03(c) states C. If Applicant Challenges a Factual Assertion as Not Properly Officially Noticed or not Properly Based Upon Common Knowledge, the Examiner Must Support the Finding With Adequate Evidence
To adequately traverse such a finding, an applicant must specifically point out the supposed errors in the examiner's action, which would include stating why the noticed fact is not considered to be common knowledge or well-known in the art. See 37 CFR1.111(b). See also Chevenard, 139 F.2d at 713, 60 USPQ at 241 ("[I]n the absence of any demand by appellant for the examiner to produce authority for his statement, we will not consider this contention."). A general allegation that the claims define a patentable invention without any reference to the examiner's assertion of official notice would be inadequate. If applicant adequately traverses the examiner's assertion of official notice, the examiner must provide documentary evidence in the next Office action if the rejection is to be maintained. See 37 CFR1.104(c)(2). See also Zurko, 258 F.3d at 1386, 59 USPQ2d at 1697 ("[T]he Board [or examiner] must point to some concrete evidence in the record in support of these findings" to satisfy the substantial evidence test). If the examiner is relying on personal knowledge to support the finding of what is known in the art, the examiner must provide an affidavit or declaration setting forth specific factual statements and explanation to support the finding. See 37 CFR 1.104(d)(2).

The appellant failed to specifically point out the supposed errors in the examiner's action dated 11/13/2008, and to state why the notice fact is not considered to be common knowledge or well known in the art, therefore In view of the inadequate traversal, and in light of the requirements of 2144.03(c), ***the examiner notes that the well known in the art statements of the previous Office Action are considered to be admitted prior art.***

Affidavit/Declaration

7. Regarding the 1.131 declaration filed 04/08/2009, attempting to disqualify Treyz

et al., as prior art, the Examiner asserts that the 1.131 is insufficient for at least the following reasons: Applicant failed to provide an evidence of “due diligence” between the dates of January 27, 2000 to December 10, 2002. Applicant must provide reasonable efforts to achieve an actual reduction to practice or to remove obstacles to its development. MPEP states:

The Rule 131 affidavit or declaration states the following:

“The showing of facts shall be such, in character and weight, as to establish reduction to practice prior to the effective date of the reference, or conception of the invention prior to the effective date of the reference coupled with due diligence from prior to said date to a subsequent reduction to practice or to the filing of the application”.

The Applicants have not given a clear explanation of how these exhibits commensurate with the claimed invention.

Applicant attempted to explain how exhibit A commensurate with the claim language, however the specific citations by the applicant in exhibit A, failed to provide proof of conception of the claim language for example as recited in claim 1 “a first database; means for generating a first predetermined content for storage in said first database; a second database; means for generating a second predetermined content for storage in said second database; server means; means for interconnecting said first and second databases to said server means; a plurality of transceivers; means providing access by each of said transceivers to said server means; and selector means on each said transceiver for selectively accessing said first and second content” in the 1.131 declaration filed 04/08/2009. The long list of e-mails submitted in exhibit C part 1 through part 4 of the

affidavit failed does not show any support for any of the claim language. Therefore the examiner does not believe proper diligence has been shown and the one supporting piece of evidence does not fully enable the current claim language of the application. In addition Applicant states that "exhibit A contains a Screen Shot of the general characteristics of Exhibit A illustrating a creation date of January 19, 2000, prior to the effective date of the United States Patent Application No. 6,587,835", however the screen shot of exhibit b shows a creation date of January 04, 2002 not January 19, 2000, furthermore the screen shot shows that the file was modified on January 19, 2000 and created on January 04, 2002; examiner questions how can a file be modified before it is even created as is the case in exhibit B?

MPEP paragraph 715.07 recites:

"The affidavit or declaration and exhibits must clearly explain which facts or data applicant is relying on to show completion of his or her invention prior to the particular date. Vague and general statements in broad terms about what the exhibits describe along with a general assertion that the exhibits describe a reduction to practice "amounts essentially to mere pleading, unsupported by proof or a showing of facts" and, thus, does not satisfy the requirements of 37 CFR 1.131(b). In re Borkowski, 505 F.2d 713, 184 USPQ 29(CCPA 1974).

Applicant must give a clear explanation of the exhibits pointing out exactly what facts are reestablished and relied on by applicant. 505 F.2d at 718-19, 184 USPQ at 33. See also In re Harry, 333 F.2d 920, 142 USPQ 164 (CCPA 1964) (Affidavit "asserts that facts exist but does not tell what they are or when they occurred ")

Examiner is not questioning the validity of exhibits, but requires that all exhibits be explained clearly and in detail, to the satisfaction of the Examiner, and also how these exhibits commensurate with the claimed invention.

Conclusion

8. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to **MUSSA SHAAWAT** whose telephone number is (571)272-2945. The examiner can normally be reached on 8am-5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ryan Zeender can be reached on 571-272-2945. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Mussa A Shaawat/
Examiner, Art Unit 3627
June 25, 2009

/F. Ryan Zeender/

Supervisory Patent Examiner, Art Unit 3627